IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

WP(C).No. 29473 of 2006(H)

AGAINST THE ORDER IN EP.744/1990 IN
OS.141/1974 of II ADDL.M.C.,NEYYATTINKARA

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PETITIONER:

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1. SILOMONY NADAR YESUDAS.

2. SARASWATHY SANTH.
BOTH ARE RESIDING AT MANCHADI, PARASICKAL P.O.,
PARASSALA (VIA), THIRUVANANTHAPURAM.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.SREEKANTH.K.R
SRI.JIBU P THOMAS
SRI.SUNIL J.CHAKKALACKAL

RESPONDENTS:

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1. PARAMANANDAM NADAR NESAMANY,
RESIDING AT MANCHADI MEKKARAKU PUTHEN VEEDU,
PARASICKAL P.O., PARASSALA (VIA),
THIRUVANANTHAPURAM.

2. MASILAMANY NADAR THANKAYYAN,
RESIDING AT MARUTHARAKKAL VEEDU, PARASICKAL P.O.,
PARASSALA (VIA), THIRUVANANTHAPURAM.

BY ADV. SRI.A.KRISHNAN FOR R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

Ext.P1:- True copy of the report of the Advocate Commissioner dated 31.8.2006.

Ext.P2:- True copy of the order dated 27.10.06.

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.29473 OF 2006

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Dated this the 5th day of January,2007

JUDGMENT

Petitioners are plaintiffs and respondents defendants in O.S.169/89 on the file of Principal Munsiff, Neyyattinkara. A decree for recovery of possession was granted. The decree was challenged in A.S.404/92. The decree was modified by the appellate court. It was challenged before this court in S.A.188/01. This court confirmed the modified decree, passed by the appellate court. E.P. was filed before Additional Munsiff Court, Neyyattinkara. The Munsiff appointed a Commission. Commissioner submitted Ext.P1 report seeking direction from the court. The Commissioner reported that there is discrepancy in the plan and is not in a position to fix the property without sufficient direction from the court. It was considered by the learned Munsiff and Ext.P2 order was passed. Ext.P2 order reads:-

> "Heard Advocate Commissioner. Advocate Commissioner shall serve notice to both sides for execution of order on or before 6.11.06. Call on 20.11.06 for report."

By Ext.P2 order, Commissioner cannot either execute the order or identify the property or complete his work. What was sought for by the Commissioner was a direction from the court as to how the property is to be fixed. Without giving necessary direction to the Commissioner as to how the decree schedule properties are to be fixed, Commissioner cannot complete his work or execute the order. Learned counsel appearing for respondents submitted that respondent has produced a copy of the plan before this court and the property could be identified with reference to

the said plan. That is a fact to be considered by the Munsiff. Ext.P2 order is quashed. Learned Munsiff is directed to hear both parties and give appropriate direction, in accordance with law, to the Commissioner as to how the properties are to be fixed.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006